IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8977 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M R PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR NIRZAR S DESAI for Petitioner

Ms. Manisha Lavkumar, AGP, for Respondent No. 1

Mr.D.R. Bhatt, for MR ASHOK N BHATT for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 09/04/2001

ORAL JUDGEMENT

1. Rule. Ms.Manisha Lavkumar and Mr.D.R. Bhatt for Mr.A.N.Bhatt, waive service of rule on behalf of respondent Nos. 1 and 2, respectively.

2. The petitioner has challenged the order at Annexure `A', by which he was directed to pay Rs.58,263/- by 15th November, 1999. He was asked to pay the said amount on the ground that he had misused H.B.A. loan granted to him and that since he has misused the said loan, he was liable to pay back the said amount with interest at the rate of 24% per annum as per G.R. dated 1.7.1987.

3. As per the averments in the petition, the petitioner was appointed as Junior Clerk under the respondent No.2 herein, and he applied for house building advance in the year 1986. Pursuant to his application for the House Building Advance ("H.B.A.", for short), he was given a loan of Rs.45,000/- by an order dated 9.4.1986. The petitioner, thereafter, purchased a flat, bearing No.21/667, in Geetanagar, in Amraiwadi Area of Ahmedabad City. The said flat was built by the Gujarat Housing Board and one Chandulal Shakaralal Suthar was the original allottee of the said flat. Even though the petitioner purchased the said flat, the same could not be got transferred in his name from the Housing Board and it is the say of the petitioner that in the records of the Municipal Corporation and the A.E.C., the said flat is said to have been transferred in favour of the petitioner and that he was paying regular taxes also for the same. It is the say of the petitioner that after the said loan was sanctioned, subsequently, the petitioner paid all the instalments of capital as well as interest to the respondent No.2 and that he has cleared all the instalments towards the principal amount. It is the say of the petitioner that since, at the relevant time, he was not having requisite deed registered in his favour, he could not get the necessary documents of title in his name and, therefore, he could not deposit the said documents to the respondent No.2 though as a condition for sanctioning the loan, the said documents were required to be deposited before respondent No.2. On the aforesaid ground, the petitioner was served with the aforesaid order, whereby he was asked to deposit the amount of Rs.58,263/-, and, ultimately, by an order dated 3.8.1999, he was asked to pay, in all, an amount of Rs.77,943/- and after deducting the amount which he has paid, he was asked to pay the remaining amount of Rs.58,263/-. The petitioner has challenged the aforesaid order by way of filing this petition.

4. It is argued by the learned Advocate for the petitioner that charging interest at the rate of 24% is on the higher side. He further pointed out that while sanctioning the loan in his favour, respondent No.2 has

not mentioned in the order that in case of default, the petitioner will have to pay the amount with penal interest. The petitioner has also relied upon the Government Resolution which is annexed at page 28 to the petition.

Mr.D.R.Bhatt, learned Advocate appearing for respondent No.2, however, stated that the petitioner has suppressed certain facts from this Court by not pointing out in his petition that he had filed the prescribed form at the time when the loan was sanctioned in his favour. Mr.Bhatt further submitted that in view of the Government Resolution, respondent No.2 was entitled to charge interest at the rate of 24% per annum.

5. I have considered the arguments and I have gone through the Government Resolution and other annexures attached to the petition. I have also considered the affidavit-in-reply.

It is not in dispute that the petitioner has already paid the principal amount and it is also required to be noted that as per the G.R., produced at page 28, which prescribed for penal interest, it is clearly stated that the Department is requested to insert condition about penal interest clearly in the order sanctioning a House Building Advance to ensure that the said condition is enforced scrupulously. It seems that while sanctioning the loan, no such condition was prescribed in the sanctioning letter. Not only that, by a subsequent Resolution dated 20th August, 1991, which is at page 32 of the petition, the rate of said penal interest is reduced by the Government.

6. Considering the totality of the facts and circumstances and considering the fact that the Government has also subsequently reduced the penal rate of interest, coupled with the fact that at the time of sanctioning the loan, the Department was required to mention, as per the directions of the Government while sanctioning the loan, that in case of default, the applicant will be liable to pay interest at the particular rate, it would be just and proper to modify the aforesaid order to the extent of reducing the payment of interest from 24% to 12%. The Department will accordingly be entitled to recover the principal amount with interest at the rate of 12%, instead of 24% per annum. Since the petitioner has not pointed out in his petition that he has signed the prescribed form and since he has suppressed the said fact, I direct the petitioner to pay cost of Rs.2,000/- to the respondent. The said

amount of costs be paid within a period of two weeks from today. The Department will be entitled to deduct from the salary of the petitioner the amount of interest at the rate of 12% per annum, as stated earlier.

The petitioner is also directed to file an undertaking that he will not object to such recovery. Said undertaking also may be filed in this Court within a period of two weeks from today.

7. So far as the argument of Mr.Bhatt that respondent No.2 is not a `State' is concerned, it is not in dispute that the State Government has power to issue necessary directions from time to time which the respondent No.2 is bound to follow. Prima facie, it seems that there is substantial control of the State Government over the affairs of respondent No.2. It is, therefore, not possible to believe that respondent No.2 is not a `State', within the meaning of Article 12 of the Constitution. However, this court has not, in detail, examined the said question and the said question is kept open, as this petition is required to be disposed of as per the directions given hereinabove.

8. Under the facts and circumstances of the case, this petition is allowed. However, considering the aforesaid fact of suppression, the petitioner is directed to pay costs quantified at Rs.2,000/-. The House Building Advance which the Department is entitled to recover may be recovered calculating interest at the rate of 12% per annum.

The Special Civil Application is accordingly disposed of. Rule is made absolute to the aforesaid extent. Ad interim relief granted earlier shall stand vacated.

(P.B. Majmudar, J.)

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(apj)